FILE COPY

FILED
DEC 6 1948
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1948

No. 451

CATHERINE BOWCOTT AND EDNA WOODCOCK,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

CLAUDE U. STONE,
119 So. Madison Ave.,
Peoria, Illinois,
Attorney for Petitioners.

BARNARD & MILLER, 33 S. Market St., Chicago. FRanklin 2-0562

SUBJECT INDEX.

Petition for Certiorari.

	PAGE
Jurisdiction	2
Statement	2
Reasons for Granting Writ	4

Brief.

Opinion Below	5
Jurisdiction	5
Statement	5
Specification of Errors Intended to be Urged	5
Jurisdiction	6
Cases Relied Upon	6
Conclusion	7

Table of Cases.

Dealy v. United States, 152 U.S., 539, at Page 542, 14 S. Court, 680, 681	6
McClintock v. United States, 60 Fed. (2nd) 839	7
Pettibone v. United States, 148 U.S., 197, Page 202, 13 S. Court, 542	6
United States v. Cruikshank, 92 U.S., 542, 558	6

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1948

No. .....

CATHERINE BOWCOTT AND EDNA WOODCOCK,
Petitioners,

VS.

UNITED STATES OF AMERICA,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

The Petitioners, Catherine Bowcott and Edna Woodcock, respectfully pray for a Writ of Certiorari to the Circuit Court of Appeals of the Seventh Circuit, Chicago, Illinois, to review the decision of said Court rendered on the 10th day of November, 1948 (Rec. 413).

JURISDICTION.

The Opinion and Judgment of the Circuit Court of Appeals sought to be reviewed is in the case of *United States of America* v. *Catherine Bowcott and Edna Woodcock* in the Record herein on Page 400, entered November 10th, 1948, (Rec. 413).

This Court has jurisdiction to review said decision under Section 243 of the Judicial Code. (28 U.S.C., Sec. 347.)

STATEMENT

The case arose in the Circuit Court of the United States for the Southern District of Illinois, Northern Division, at Peoria, Illinois. Petitioners were indicted by a Grand Jury in April, 1944, on a charge of using the mails to defraud, in violation of Section 215 of the Criminal Code. (18 U.S.C., Sec. 338).

The Indictment consisted of Ten Counts. The First Count of the Indictment set forth the fraudulent scheme. This First Count setting up the scheme charged that the Petitioners solicited funds which they stated were to be invested in a Plant which Henry Ford and the Ford Motor Company contemplated operating in Fulton County, Illinois. Investors were promised employment in this enterprise, besides enormous profits; that Mr. Ford was desirous of using the enterprise as a means of distributing surplus income in the form of charitable contributions for income tax purposes, and that he would make such gifts to persons who manifested confidence in him by investing in his enterprise.

The evidence showed that Petitioners did not use the mails to secure the investments.

The Petitioners gave their investors Notes. Some were Judgment Notes for the amount invested. All were short term notes, due in from Thirty to Ninety days.

Demurrer filed (Rec. Page 25), alleging that the First Count of the Indictment does not charge a crime against the United States. This Count sets forth the scheme and alleges that a letter was mailed to Woods (Rec. Page 2). It failed to allege that said letter was mailed in furtherance of the scheme to defraud. The Trial Court overruled the Demurrer. The Demurrer further charged (Rec. Page 25), that Counts Two to Ten inclusive failed to charge a crime against the United States for the reason that each of the latter Counts incorporated the scheme set forth in the First Count, (which did not charge the crime), and was overruled by the Trial Court. At the close of the case the Government dismissed Counts One and Ten (Rec. Page 341.)

Counsel for the Government makes no contention that the First Count standing alone is sufficient to charge a crime against the United States. There is no charge in Count One that the letter in question was mailed in furtherance to the scheme to defraud (Rec. Page 2).

All remaining Counts are dependent upon Count One because they incorporate the scheme by reference thereto.

The Circuit Court of Appeals, in its Opinion, ignored the question of the failure of the Trial Court to sustain the demurrer to the Indictment (Rec. Page 404). It passes on the question of the dismissal of Count One by the Government, and cites cases, one including its own, that upon dismissal, the Count could be used by the remaining Counts. A Petition for re-hearing was filed and denied November 10th, 1948 (Rec. Page 413).

REASONS FOR GRANTING WRIT.

The Circuit Court of Appeals has decided an important question which has not been, but should be settled by this Court.

Argument in support of this reason is contained in our brief, *post*.

Wherefore, Petitioners pray that this Petition for a Writ of Certiorari be granted to review the Judgment of the Court below.

.....

CLAUDE U. STONE,
Attorney for Petitioners.

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

OPINION BELOW.

The Opinion of the Circuit Court of Appeals is set forth on Rec. Page 400.

JURISDICTION.

The grounds on which the jurisdiction of this Court is invoked, are stated in the Petition.

STATEMENT.

A Statement of the case has been set forth in the Petition, and in the interest of brevity is not repeated here.

SPECIFICATION OF ERRORS INTENDED TO BE URGED.

The Circuit Court of Appeals erred:

(1) In ignoring the refusal of the Trial Court to sustain a Demurrer as to Count One of the Indictment.

(2) In holding that succeeding Counts of an Indictment are good that incorporate by reference a scheme set up in a prior Count that does not charge a crime, and to which a demurrer should have been sustained.

(3) In holding that a bad Count which does not charge crime, and is demurrable, for that reason can be cured

after the evidence of that Count has gone to the Jury, by a Motion to dismiss the Count.

(4) In holding that the First Count, which does not charge a crime, and should have been quashed, can be relied upon by *other* Counts for the scheme therein contained.

JURISDICTION.

This Court has jurisdiction to review the decision of the Circuit Court of Appeals under Section 240 of the Judicial Code. (28 U.S.C., 347.)

We submit that the question involved herein has not been directly passed upon by this Court.

CASES RELIED UPON.

In *Dealy* v. *United States,* 152 U. S., 539, at Page 542, 14 S. Court, 680, 681, the Court said:

> "Yet whatever the purpose may be, each Count is in form a distinct charge of a separate offense, and hence a verdict of guilty or not guilty as to it, is not responsive to the charge in any other Count."

In *Pettibone* v. *United States,* 148 U.S., 197, Page 202, 13 S. Court, 542, the Court stated:

> "The general rule in reference to an Indictment is that all the material facts and circumstances embraced in the definition of the offense must be stated, and that if any essential element of the crime is omitted, such omission cannot be supplied by intendment or implication. The charge must be made directly, and not inferentially or by way of recital." Citing:
>
> *United States* v. *Hess,* 124 U.S., 483; 8 S. Ct., 571.

In the case of *United States* v. *Cruikshank,* 92 U.S., 542, 558, it is stated that "every ingredient of which the

offense is composed must be accurately and clearly alleged."

The case of *McClintock* v. *United States*, 60 Fed. (2nd) 839.

This is a mail fraud case. The Indictment consisted of Nineteen Counts. On Page 840 the Court says:

> "Each Count of every Indictment is regarded as if it were a separate Indictment, and must be sufficient in itself." Citing:
>
> *Dunn* v. *United States*, 284 U.S., 390; 52 S. Ct., 189.
>
> Joyce on Indictment, (2nd Ed.), Par. 555; also *DiJianne* v. *United States*, (C.C.A.) 282 F., 737.

Counsel for the Government makes no contention that the First Count charged a crime against the United States.

Petitioner admits that there are many cases even of this Court that call for liberal construction of criminal pleadings, but they must be read in connection with the Sixth Amendment to the Constitution, which requires that the defendant be informed of the nature and cause of the accusation to be set out through an Indictment by a Grand Jury, as guaranteed by the Fifth Amendment. No Statute and no decision would qualify or amend or set aside these Constitutional provisions, nor can an Indictment be amended.

Cumulative sentences can be given in Indictments. Each Count is considered a separate crime.

CONCLUSION.

It is respectfully submitted that a Writ of Certiorari should be issued.

CLAUDE U. STONE,
Attorney for Petitioners.